

**REMARKS****Election/Restriction**

The Examiner has required restriction to one of the following inventions under 35 U.S.C. §121:

- Group I: Claims 1-2 and 9-17, drawn to isolated DNA molecules encoding phosphoenolpyruvate from Coryneform glutamicum, vectors and host cell comprising said molecules and methods of expressing said molecules classified in class 435, subclass 69.1;
- Group II: Claims 18-19 and 39, drawn to said pyruvate, classified in class 530, subclass 350;
- Group III: Claims 25-33, drawn to a method of producing a fine chemical comprising culturing a host cell comprising said DNA molecules, classified in class 435, subclass 41.

Applicants hereby elect, without traverse, Group I (claims 1-2 and 9-17) under 35 U.S.C. §121 for prosecution in the present application.

At page 3 of the instant Restriction Requirement, the Examiner states that:

Applicant is reminded that Claims 1-2, 9-17, 39 and 25-33 drawn to Groups I, part of Group II (only claim 39) and Group III are generic to a plurality of disclosed patentably distinct inventions comprising SEQ ID NO:2, 6, 8, 16, 18, 22, 24, 26, 28, and 30 directed to products of distinct chemical structure and function. Applicant is required under 35 U.S.C. 121 to elect a single invention from Groups I-III above directed to a single SEQ ID NO.: even though this requirement is traversed.

Applicants hereby elect SEQ ID NO:1, *with traverse*. Applicants respectfully submit that the policy set forth in 1192 O.G. 68 (Nov. 19, 1996) clearly provides that a *reasonable number* of sequences are allowed to be claimed in a single application. It has been determined that "normally ten sequences constitute a reasonable number for examination purposes" and, thus, up to ten independent and distinct sequences are often examined in a single application without restriction. M.P.E.P. §804.4 and 1192 O.G. 68

(Nov. 19, 1996). In the interest of saving considerable time and cost to Applicants and the United States Patent Office, and in accordance with 1192 O.G. 68 (Nov. 19, 1996), Applicants respectfully request that at least 10 sequences be examined in the instant application.

Furthermore, it is the Applicants' position that, with respect to the claimed nucleotide sequences, a species election for searching purposes would be more appropriate in this situation.

Applicants respectfully submit that a sufficient search and examination with respect to the claimed nucleotide sequences can be made without serious burden on the Examiner. As the M.P.E.P. states:

[i]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions. M.P.E.P. § 803.

Applicants respectfully submit that the searches with regard to each SEQ ID NO. would be co-extensive and would not involve a serious burden on the Examiner. Applicants therefore request that the Examiner re-characterize the restriction requirement with respect to the SEQ ID NOs. as a species election requirement.

It is the Applicants' understanding that under 35 U.S.C. §121, an election of a single species for prosecution on the merits is required, to which the claims will be restricted if no generic claim is finally held allowable. Applicants submit that claim 1 is generic. Applicants further understand that upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent from or otherwise include all the limitations of an allowed generic claims as provided by 37 C.F.R. §1.41 *et seq.*

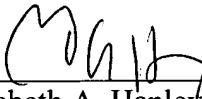
Accordingly, within Group I, Applicants hereby further elect the species of SEQ ID NO:1, SEQ ID NO:5, SEQ ID NO:7, SEQ ID NO:15, SEQ ID NO:17, SEQ ID NO:21, SEQ ID NO: 23, SEQ ID NO:25, SEQ ID NO:27, and SEQ ID NO:29 for search purposes only. Applicants even further elect the species of SEQ ID NO:1 for search purposes only.

Applicants reserve the right to traverse the above restriction with respect to non-elected Groups II-III in this or subsequent applications.

**SUMMARY**

If a telephone conversation with Applicants' Attorney would expedite the prosecution of the above-identified application, the Examiner is urged to call the undersigned at (617) 227-7400.

Respectfully submitted,

  
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